

Message Text

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TO AMEMBASSY BONN

C O N F I D E N T I A L STATE 240042

E.O. 11652: GDS

TAGS: EINV, GW

SUBJECT: CO-DETERMINATION

REF: STATE 226688

1. PRESS GUIDANCE GIVEN REFTEL NOT USED SINCE WASHINGTON PRESS NOT YET RAISED QUESTION ON CO-DETERMINATION. NEW GUIDANCE HAS BEEN ISSUED IN ORDER STATE MORE CLEARLY THAT, WHILE WE WILL BE CONSIDERING HOW ANY NEW CO-DETERMINATION LEGISLATION MIGHT AFFECT RIGHTS U.S. INVESTORS IN GERMANY, CHAMBER REPORT EXPRESSES VIEWS OF PRIVATE ORGANIZATION AND IT WOULD BE INAPPROPRIATE FOR US TO COMMENT SPECIFICALLY ON THE CHAMBER'S STAND OR THEIR LEGAL OPINION. NEW GUIDANCE ON "IF ASKED" BASIS FOLLOWS:

Q: THE AMERICAN CHAMBER OF COMMERCE IN GERMANY HAS ISSUED A REPORT WHICH CRITICIZES THE GERMAN GOVERNMENT'S INTRODUCTION OF LEGISLATION WHICH WOULD EXTEND CO-DETERMINATION, EI-E., WORKER PARTICIPATION IN THE MANAGEMENT OF BUSINESS FIRMS. WHAT IS THE DEPARTMENT'S POSITION?

A: THE CHAMBER'S REPORT REPRESENTS THE VIEWS OF A PRIVATE ORGANIZATION. THE USG TAKES NO POSITION WITH REGARD TO THOSE VIEWS. THE DEPARTMENT IS, HOWEVER, CLOSELY FOLLOWING THE PROPOSED LEGISLATION ON CO-DETERMINATION, CONFIDENTIAL

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AS IT WOULD STUDY ANY LEGISLATION WHICH MIGHT AFFECT THE

TREATY RIGHTS OF U.S. NATIONALS UNDER ANY U.S. TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION (FCN), INCLUDING THE 1954 FCN WITH THE FEDERAL REPUBLIC. THERE ARE COMPLEX LEGAL QUESTIONS INVOLVED WHICH WILL REQUIRE EXTENDED STUDY BEFORE ANY CONCLUSIONS CAN BE REACHED. MOREOVER, THE EFFECT ON U.S. NATIONALS WILL NOT BE CLEAR UNTIL THE LEGISLATION IS ENACTED IN ITS FINAL FORM.

Q: GERMAN TRADE UNION LEADERS AND CERTAIN COMMENTATORS HAVE CHARGED THAT THE U.S. IS SEEKING TO INTERFERE IN INTERNAL GERMAN AFFAIRS. WOULD YOU COMMENT ON THESE ACCUSATIONS?

A: THIS IS A FALSE ISSUE. WE DO NOT QUESTION GERMANY'S RIGHT TO PURSUE A POLICY OF CO-DETERMINATION. OUR ONLY INTEREST IS IN ASSURING THE RIGHTS OF U.S. NATIONALS UNDER OUR FCN TREATY WITH GERMANY.

Q: HAVE YOU OR DO YOU PLAN TO CONSULT WITH GERMANY ON THIS TREATY QUESTION?

A: UNTIL NOW WE HAVE NOT HAD ANY CONSULTATIONS ON THIS ISSUE. SHOULD IT APPEAR THAT TREATY ISSUES ARE IN FACT PRESENT, WE ARE CERTAIN THAT THEY CAN BE RESOLVED WITHIN THE FRAMEWORK OF OUR LONGSTANDING FRIENDLY AND CORDIAL RELATIONS WITH THE FEDERAL REPUBLIC OF GERMANY.

2. WE ARE PRESSING AHEAD WITH DEPARTMENT'S STUDY OF LEGAL ISSUES INVOLVED RE EFFECT OF PROPOSED CO-DETERMINATION LEGISLATION ON RIGHTS OF U.S. INVESTORS UNDER FCN TREATY. COMPLETION WILL PROBABLY TAKE A MONTH OR SO. THE LEGAL ADVISER INTENDS TO WORK CLOSELY WITH EMBASSY LEGAL ADVISER PETER PFUND IN UNDERTAKING STUDY AND AN OFFICER ON LEGAL ADVISER'S STAFF MAY, IF NECESSARY, VISIT BONN WITHIN NEXT SEVERAL WEEKS TO CONSULT WITH HIM AND TO OBTAIN RELEVANT INFORMATION.

3. UNTIL WE DETERMINE WHETHER AND TO WHAT EXTENT U.S. TREATY RIGHTS IMPAIRED, EMBASSY SHOULD MAINTAIN NON-COM-CONFIDENTIAL

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MITTAL POSTURE ALONG LINES OF PRESS GUIDANCE BOTH PUBLICLY AND WITH FRG.

4. ANY INFORMATION THAT EMBASSY CAN DEVELOP RE FRG'S OWN STUDY OF THE LEGALITY OF THE LEGISLATION WOULD BE MOST HELPFUL. WE ARE THINKING ESPECIALLY OF THE STUDY BY THE MINISTRY OF JUSTICE ON THE CONSTITUTIONALITY OF THE

PROPOSED LEGISLATION. PRESUMABLY, THE FOREIGN OFFICE ALSO HAS LOOKED AT THE QUESTION OF THE COMPATIBILITY

OF THE LEGISLATION WITH THE FRG'S VARIOUS TREATY OBLIGATIONS. WE RECOGNIZE THAT IN VIEW OF EXTREME SENSITIVITY OF THIS ISSUE, HIGH LEVEL CONTACTS WITH FRG MAY NOT BE APPROPRIATE; HOWEVER, WORKING LEVEL CONTACTS IN FRG, ESPECIALLY THOSE OF PFUND, MAY PROVE FRUITFUL IN THIS REGARD.

5. IF TREATY ISSUES DO, IN FACT, ARISE, WE SHOULD SEEK TO DEAL WITH THEM IN AS LOW KEY MANNER AS POSSIBLE IN ORDER MINIMIZE IMPACT ON RELATIONS WITH FEDERAL REPUBLIC. FCN TREATY (ARTICLE XXVII) PROVIDES FOR CONSULTATIONS REGARDING ISSUES ARISING UNDER IT. HOWEVER, INFORMAL OFFER BY FRG OF CONSULTATIONS ON TREATY ISSUES WOULD BE LESS OBTRUSIVE AND THUS PREFERABLE TO USG INVOCATION OF CONSULTATION PROVISION OF FCN. DOES EMBASSY BELIEVE IT WOULD BE FEASIBLE TO ENCOURAGE FRG TO OFFER INFORMAL CONSULTATIONS? IN THIS REGARD, THERE ARE INSTANCES IN WHICH USG HAS CONSULTED WITH APPROPRIATE FRG OFFICIALS IN REGARD TO THEIR VIEW OF POSSIBLE U.S. LEGISLATION WHICH WOULD AFFECT FRG, SUCH AS THE VISIT OF MR. MARTIN OF THE U.S. FEDERAL RESERVE BANK TO DISCUSS LEGISLATION REQUIRING THAT FOREIGN BANKS IN THE U.S. BE OBLIGATED TO JOIN THE FED.

6. ONE PROBLEM WE FACE IS THAT WE CANNOT BE CERTAIN WHAT THE FINAL CO-DETERMINATION LAW WILL LOOK LIKE, AS IT APPEARS LIKELY THAT LEGISLATION WILL BE MODIFIED BEFORE PASSAGE. WHILE LEGAL ANALYSIS OF PRESENT DRAFT BILL CAN SERVE AS GUIDE, WE WOULD HOPE THAT CONTINUOUS LOW-KEY CONSULTATIONS WITH APPROPRIATE FRG OFFICIALS

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WHILE FORM OF LAW STILL FLUID WOULD ENABLE US TO AVERT LEGAL-POLITICAL CONFRONTATION THAT COULD RESULT SHOULD FRG IRREVOCABLY COMMIT ITSELF BY PASSAGE OF LAW INFRINGING ON TREATY RIGHTS.

7. EMBASSY RECOMMENDATIONS FOR HANDLING THIS SENSITIVE MATTER-BOTH IN IMMEDIATE FUTURE AND SHOULD IT BE

DETERMINED THAT TREATY RIGHTS ARE INVOLVED-WOULD BE APPRECIATED. INGERSOLL

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